

## **World Leaders in Juvenile**

### **Executions**

**by Stephen Solley QC  
and Tim Buley**

The US has begun the 21st century by confirming its status as the world leader in the execution of persons convicted of murder as juveniles. On 25th January this year Glen Charles McGinnis was executed by lethal injection. He was the last of three American death row prisoners executed in the first month of the millennium for offences committed as a juvenile. Every country will have marked the opening of the new millennium in its own way, but the actions taken by the US in the opening month can only be a source of concern for those who look to the US as the natural leader for the international community and the protection of human rights.

The three young men - Douglas Christopher Thomas, Steve Edward Roach and Glen Charles McGinnis - were executed in the US in January 2000, all for crimes committed when they were 17. The US had previously executed 10 child offenders since 1990 (over half the global total) but the three may prove to be only the tip of the iceberg. Some 70 prisoners on death row in the US are currently awaiting execution for crimes committed when they were 16 or 17.

It may be arbitrary to draw the line at 18. To execute for offences committed at 17 does not seem much worse than to do so for those committed at 18 or 19. Nevertheless the histories of these three cases clearly illustrate the particular immorality of executing children for crimes committed at an age when we do not and should not expect fully responsible behaviour. The psychologist who examined Chris Thomas, and who gave evidence for both the defence and the prosecution at his trial, found that he was a 'developmentally immature teenager', and feared that in taking full blame for the crime he may have been trying to protect his girlfriend Jessica who was present at the time of the murder for which he was convicted. He later said that the death sentence against Chris Thomas represented "the worst defeat of my career".

Similar findings were made by a psychologist who examined Steve Roach, who said that this 'particularly immature' defendant 'did not show very good ability in many situations to control his emotions or behaviour like 17-year-old or 18-year-old individuals should do'. Glen McGinnis suffered sustained abuse at the hands of his stepfather. The Child Protective Services had to intervene on three occasions, once after the boy was raped, again when he was beaten over the head with a baseball bat and finally after his mother and stepfather burned his stomach with hot sausage grease.

Glen McGinnis was the subject of a last minute appeal by English based lawyers acting under the auspices of the Bar Human Rights Committee of England and Wales. Philip Sapsford QC, a barrister who recently acted in the Maharaj case and who has extensive experience of American death row cases, submitted a brief to the US Supreme Court just days before McGinnis was due to be executed. Despite a detailed review of the international law prohibition on execution of persons convicted of offences committed when juveniles, and its proper effect in US domestic law, the Supreme Court refused to accept this brief. Similarly, appeals to the Governor of Texas to stay the execution of McGinnis on the basis of generally accepted standards of international criminal law fell on deaf ears.

The conduct of the US in this regard is all the more striking when one considers the company it keeps. At a time when almost all countries have discontinued this practice, the US is the most prominent member of an ever decreasing group of countries to allow the death penalty for juvenile offenders. The other

members of that group - Iran, Nigeria, Pakistan, Saudi Arabia - are not known for their respect for human rights. The hypocrisy of the US is clear in the self-righteous stance it takes towards many countries whose record at least in this respect is far better. Even China, a country whose human rights record the US has undertaken to reform by a process of 'constructive engagement', has outlawed this practice in the last 10 years. Meanwhile, the US is one of only two countries not to ratify the 10-year-old UN Convention on the Rights of the Child. The other country is Somalia.

The stance taken by the US is also in blatant breach of international law and of treaties it has itself signed. Article 6(5) of the International Covenant on Civil and Political Rights, ratified by the US in 1992, forbids the execution of juvenile offenders, and the same treaty specifically forbids derogation from this prohibition under any circumstances. It is furthermore now an accepted principle of international customary law that the death penalty should not be employed against juveniles. This flagrant breach of established principles by a country as prominent as the US undermines the rule of law and is a source of comfort to all countries that abuse the rights of their citizens.

The McGinnis case was the subject of an appeal on behalf of the EU by the President of Portugal to the Governor of Texas, presidential hopeful George W. Bush. A similar message was sent by His Holiness the Pope. While the British Government is associated with the message sent by the European Union, the Bar Human Rights Committee asked the Foreign Secretary Robin Cook to send a message specifically on behalf of HM Government.

In representations to the Foreign Office, Peter Carter QC, on behalf of the Bar Human Rights Committee, reminded the Foreign Secretary of his undertaking at the Amnesty International Human Rights Festival, when Mr Cook said: 'Another radical change has been our international stand on the death penalty. We are signing up to the death penalty protocol to the European Convention on Human Rights. For the first time Britain is taking a clear unequivocal stand against the death penalty... We need to take this further. We need to use our diplomatic clout, our technical assistance and our human rights projects to persuade other countries not to use the death penalty'. In spite of this clear statement of principle no further action was taken by the Foreign Office. This is a shame given the special relationship that exists between the UK and US governments, which mean that representations made from that source have more chance of success than many. Once again, it seems that the government's claim to an ethical foreign policy may be more about sound-bite than taking any action that would embarrass its allies. If an ethical foreign policy is to mean anything, the British Government has to bridge the credibility gap between aspiration and action.

Note for Editors:

1. The Bar Human Rights Committee was set up in 1991 to promote the protection and advance of human rights and to assist with the implementation of the rule of law throughout the world. It acts independently of the General Council of the Bar.
2. For further information please contact the BHRC Administrator on 0171 395 9508